

Republic of the Philippines  
**SUPREME COURT**  
Manila

SECOND DIVISION

**G.R. No. 108253 February 23, 1994**

**LYDIA L. GERALDEZ**, petitioner,

vs.

**HON. COURT OF APPEALS and KENSTAR TRAVEL CORPORATION**, respondents.

*Natividad T. Perez for petitioner.*

*Bito, Lozada, Ortega & Castillo for private respondent.*

**REGALADO, J.:**

Our tourism industry is not only big business; it is a revenue support of the nation's economy. It has become a matter of public interest as to call for its promotion and regulation on a cabinet level. We have special laws and policies for visiting tourists, but such protective concern has not been equally extended to Filipino tourists going abroad. Thus, with the limited judicial relief available within the ambit of present laws, our tourists often prefer who fail to deliver on their undertakings. This case illustrates the recourse of one such tourist who refused to forget.

An action for damages by reason of contractual breach was filed by petitioner Lydia L. Geraldez against private respondent Kenstar Travel Corporation, docketed as Civil Case No. Q-90-4649 of the Regional Trial Court of Quezon City, Branch 80.<sup>1</sup> After the parties failed to arrive at an amicable settlement, trial on the merits ensued.

Culling from the records thereof, we find that sometime in October, 1989, Petitioner came to know about private respondent from numerous advertisements in newspapers of general circulation regarding tours in Europe. She then contacted private respondent by phone and the latter sent its representative, Alberto Vito Cruz, who gave her the brochure for the tour and later discussed its highlights. The European tours offered were classified into four, and petitioner chose the classification denominated as "VOLARE 3" covering a 22-day tour of Europe for \$2,990.00. She paid the total equivalent amount of P190,000.00 charged by private respondent for her and her sister, Dolores.

Petitioner claimed that, during the tour, she was very uneasy and disappointed when it turned out that, contrary to what was stated in the brochure, there was no European tour manager for their group of tourists, the hotels in which she and the group were bullited were not first-class, the UGC Leather Factory which was specifically added as a highlight of the tour was not visited, and the Filipino lady tour guide by private respondent was a first timer, that is, she was performing her duties and responsibilities as such for the first time.<sup>2</sup>

In said action before the Regional Trial Court of Quezon City, petitioner likewise moved for the issuance of a writ of preliminary attachment against private respondent on the ground that it committed fraud in contracting an obligation, as contemplated in Section 1(d), Rule 57 of the Rules of Court, to which no opposition by the latter appears on the record. This was granted by the court *a quo*<sup>3</sup> but the preliminary attachment was subsequently lifted upon the filing by private respondent of a counterbond amounting to P990,000.00.<sup>4</sup>

During the pendency of said civil case for damages, petitioner also filed other complaints before the Department of Tourism in DOT Case No. 90-121 and the Securities and Exchange Commission in PED Case No. 90-3738,<sup>5</sup> wherein, according to petitioner, herein private respondent was meted out a fine of P10,000.00 by the Commission and P5,000.00 by the Department,<sup>6</sup> which facts are not disputed by private respondent in its comment on the present petition.

On July 9, 1991, the court *a quo* rendered its decision <sup>7</sup> ordering private respondent to pay petitioner P500,000.00 as moral damages, P200,000.00 as nominal damages, P300,000.00 as exemplary damages, P50,000.00 as and for attorney's fees, and the costs of the suit. <sup>8</sup> On appeal, respondent court <sup>9</sup> deleted the award for moral and exemplary damages, and reduced the awards for nominal damages and attorney's fees to P30,000.00 and P10,000.00, respectively. <sup>10</sup>

Hence, the instant petition from which, after sifting through the blades of contentions alternately thrust and parried in the exchanges of the parties, the pivotal issue that emerges is whether or not private respondent acted in bad faith or with gross negligence in discharging its obligations under the contract.

Both the respondent court and the court *a quo* agree that private respondent failed to comply faithfully with its commitments under the Volare 3 tour program, more particularly in not providing the members of the tour group with a European tour manager whose duty, *inter alia*, was to explain the points of interest of and familiarize the tour group with the places they would visit in Europe, and in assigning instead a first timer Filipino tour guide, in the person of Rowena Zapanta, <sup>11</sup> to perform that role which definitely requires experience and knowledge of such places. It is likewise undisputed that while the group was able to pay a visit to the site of the UGC Leather Factory, they were brought there at a very late hour such that the factory was already closed and they were unable to make purchases at supposedly discounted prices. <sup>12</sup> As to the first-class hotels, however, while the court *a quo* found that the hotels were not first-class, respondent court believed otherwise, or that, at least, there was substantial compliance with such a representation.

While clearly there was therefore a violation of the rights of petitioner under the aforementioned circumstances, respondent court, contrary to the findings of the trial court, ruled that no malice or bad faith could be imputed to private respondent, hence there is no justification for the award of moral and exemplary damages. Furthermore, it held that while petitioner is entitled to nominal damages, the amount awarded by the trial court was unconscionable since petitioner did not suffer actual or substantial damage from the breach of contract, <sup>13</sup> hence its reduction of such award as hereinbefore stated.

After thorough and painstaking scrutiny of the case records of both the trial and appellate courts, we are satisfactorily convinced, and so hold, that private respondent did commit fraudulent misrepresentations amounting to bad faith, to the prejudice of petitioner and the members of the tour group.

By providing the Volare 3 tourist group, of which petitioner was a member, with an inexperienced and a first timer tour escort, private respondent manifested its indifference to the convenience, satisfaction and peace of mind of its clients during the trip, despite its express commitment to provide such facilities under the Volare 3 Tour Program which had the grandiose slogan "Let your heart sing. <sup>14</sup>

Evidently, an inexperienced tour escort, who admittedly had not even theretofore been to Europe, <sup>15</sup> cannot effectively acquaint the tourists with the interesting areas in the cities and places included in the program, or to promptly render necessary assistance, especially where the latter are complete strangers thereto, like witnesses Luz Sui Haw and her husband who went to Europe for their honeymoon. <sup>16</sup>

We agree with petitioner that the selection of Zapanta as the group's tour guide was deliberate and conscious choice on the part of private respondent in order to afford her an on-the-job training and equip her with the proper opportunities so as to later qualify her as an "experienced" tour guide and eventually be an asset of respondent corporation. <sup>17</sup> Unfortunately, this resulted in a virtual project experimentation with petitioner and the members of the tour as the unwitting participants.

We are, therefore, one with respondent court in faulting private respondent's choice of Zapanta as a qualified tour guide for the Volare 3 tour package. It brooks no argument that to be true to its undertakings, private respondent should have selected an experienced European tour guide, or it could have allowed Zapanta to go merely as an understudy under the guidance, control and supervision of an experienced and competent European or Filipino tour guide, <sup>18</sup> who could give her the desired training.

Moreover, a tour guide is supposed to attend to the routinary needs of the tourists, not only when the latter ask for assistance but at the moment such need becomes apparent. In other words, the tour guide, especially by reason of her experience in previous tours, must be able to anticipate the possible needs and problems of the tourists instead of waiting for them to bring it to her attention. While this is stating the obvious, it is her duty to see to it that basic personal necessities such as soap, towels and other daily amenities are provided by the hotels. It is also expected of her to see to it that the tourists are provided with sanitary surroundings and to actively arrange for medical attention in case of accidents, as what befell petitioner's sister and wherein the siblings had to practically fend for themselves since, after merely calling for an ambulance, Zapanta left with the other tour participants. <sup>19</sup>

Zapanta fell far short of the performance expected by the tour group, her testimony in open court being revelatory of her inexperience even on the basic function of a tour guide, to wit:

Q Now, are you aware that there were times that the tourists under the "Volare 3" were not provided with soap and towels?

A They did not tell me that but I was able to ask them later on but then nobody is complaining. <sup>20</sup> . . . .

The inability of the group to visit the leather factory is likewise reflective of the neglect and ineptness of Zapanta in attentively following the itinerary of the day. This incompetence must necessarily be traced to the lack of due diligence on the part of private respondent in the selection of its employees. It is true that among the thirty-two destinations, which included twenty-three cities and special visits to nine tourist spots, this was the only place that was not visited. <sup>21</sup> It must be noted, however, that the visit to the UGC Leather Factory was one of the highlights <sup>22</sup> of the Volare 3 program which even had to be specifically inserted in the itinerary, hence it was incumbent upon the organizers of the tour to take special efforts to ensure the same. Besides, petitioner did expect much from the visit to that factory since it was represented by private respondent that quality leather goods could be bought there at lower prices. <sup>23</sup>

Private respondent represents Zapanta's act of making daily overseas calls to Manila as an exercise of prudence and diligence on the latter's part as a tour guide. <sup>24</sup> It further claims that these calls were needed so that it could monitor the progress of the tour and respond to any problem immediately. <sup>25</sup> We are not persuaded. The truth of the matter is that Zapanta, as an inexperienced trainee-on-the-job, was required to make these calls to private respondent for the latter to gauge her ability in coping with her first assignment and to provide instructions to her. <sup>26</sup>

Clearly, therefore, private respondent's choice of Zapanta as the tour guide is a manifest disregard of its specific assurances to the tour group, resulting in agitation and anxiety on their part, and which deliberate omission is contrary to the elementary rules of good faith and fair play. It is extremely doubtful if any group of Filipino tourists would knowingly agree to be used in effect as guinea pigs in an employees' training program of a travel agency, to be conducted in unfamiliar European countries with their diverse cultures, lifestyles and languages.

On the matter of the European tour manager, private respondent's advertisement in its tour contract declares and represents as follows:

#### FILIPINO TOUR ESCORT!

He will accompany you throughout Europe. He speaks your language, shares your culture and feels your excitement.

He won't be alone because you will also be accompanied by a . . .

#### EUROPEAN TOUR MANAGER!

You get the best of both worlds. Having done so many tours in the past with people like you, he knows your sentiments, too. So knowledgeable about Europe, there is hardly a question he can't answer. <sup>27</sup>

Private respondent contends that the term "European Tour Manager" does not refer to an individual but to an organization, allegedly the Kuoni Travel of Switzerland which supposedly prepared the itinerary for its "Volare Europe Tour," negotiated with all the hotels in Europe, selected tourist spots and historical places to visit, and appointed experienced local tour guides for the tour group. <sup>28</sup>

We regret this unseemly quibbling which perforce cannot be allowed to pass judicial muster.

A cursory reading of said advertisement will readily reveal the express representation that the contemplated European tour manager is a natural person, and not a juridical one as private respondent asserts. A corporate entity could not possibly accompany the members of the tour group to places in Europe; neither can it answer questions from the tourists during the tour. Of course, it is absurd that if a tourist would want to know how he could possibly go to the nearest store or supermarket, he would still have to call Kuoni Travel of Switzerland.

Furthermore, both lower courts observed, and we uphold their observations, that indeed private respondent had the obligation to provide the tour group not only with a European tour manager, but also with local European tour guides. The latter, parenthetically, were likewise never made available. <sup>29</sup> Zapanta claims that she was accompanied by a European local tour guide in most of the major cities in Europe. We entertain serious doubts on, and accordingly reject, this pretension for she could not even remember the name of said European tour guide. <sup>30</sup> If such a guide really existed, it is incredible why she could not even identify the former when she testified a year later, despite the length of their sojourn and the duration of their association.

As to why the word "he" was used in the aforequoted advertisement, private respondent maintains that the pronoun "he" also includes the word "it," as where it is used as a "nominative case form in general statements (as in statutes) to include females, fictitious persons (as corporations)." <sup>31</sup> We are constrained to reject this submission

as patently strained and untenable. As already demonstrated, it is incredible that the word "he" was used by private respondent to denote an artificial or corporate being. From its advertisement, it is beyond cavil that the import of the word "he" is a natural and not a juridical person. There is no need for further interpretation when the wordings are clear. The meaning that will determine the legal effect of a contract is that which is arrived at by objective standards; one is bound, not by what he subjectively intends, but by what he leads others reasonably to think he intends. <sup>32</sup>

In an obvious but hopeless attempt to arrive at a possible justification, private respondent further contends that it explained the concept of a European tour manager to its clients at the pre-departure briefing, which petitioner did not attend. <sup>33</sup> Significantly, however, private respondent failed to present even one member of the tour group to substantiate its claim. It is a basic rule of evidence that a party must prove his own affirmative allegations. <sup>34</sup> Besides, if it was really its intention to provide a juridical European tour manager, it could not have kept on promising its tourists during the tour that a European tour manager would come, <sup>35</sup> supposedly to join and assist them.

Veering to another line of defense, private respondent seeks sanctuary in the delimitation of its responsibility as printed on the face of its brochure on the Volare 3 program, to wit:

RESPONSIBILITIES: KENSTAR TRAVEL CORPORATION, YOUR TRAVEL AGENT, THEIR EMPLOYEES OR SUB-AGENTS SHALL BE RESPONSIBLE ONLY FOR *BOOKING AND MAKING ARRANGEMENTS AS YOUR AGENTS*. Kenstar Travel Corporation, your travel Agent, their employees or sub-agents assume no responsibility or liability arising out of or in connection with the services or lack of services, of any train, vessel, other conveyance or station whatsoever in the performance of their duty to the passengers or guests, *neither will they be responsible for any act, error or omission, or of any damages, injury, loss, accident, delay or irregularity which may be occasioned by reason (of) or any defect in . . . lodging place or any facilities . . .* (Emphasis by private respondent.) <sup>36</sup>

While, generally, the terms of a contract result from the mutual formulation thereof by the parties thereto, it is of common knowledge that there are certain contracts almost all the provisions of which have been drafted by only one party, usually a corporation. Such contracts are called contracts of adhesion, because the only participation of the party is the affixing of his signature or his "adhesion" thereto. <sup>37</sup> In situations like these, when a party imposes upon another a ready-made form of contract, <sup>38</sup> and the other is reduced to the alternative of taking it or leaving it, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing, a contract of adhesion results. While it is true that an adhesion contract is not necessarily void, it must nevertheless be construed strictly against the one who drafted the same. <sup>39</sup> This is especially true where the stipulations are printed in fine letters and are hardly legible as is the case of the tour contract <sup>40</sup> involved in the present controversy.

Yet, even assuming *arguendo* that the contractual limitation aforequoted is enforceable, private respondent still cannot be exculpated for the reason that responsibility arising from fraudulent acts, as in the instant case, cannot be stipulated against by reason of public policy. Consequently, for the foregoing reasons, private respondent cannot rely on its defense of "substantial compliance" with the contract.

Private respondent submits likewise that the tour was satisfactory, considering that only petitioner, out of eighteen participants in the Volare 3 Tour Program, actually complained. <sup>41</sup> We cannot accept this argument. Section 28, Rule 130 of the Rules of Court declares that the rights of a party cannot be prejudiced by an act, declaration, or *omission* of another, a statutory adaptation of the first branch of the hornbook rule of *res inter alios acta* <sup>42</sup> which we do not have to belabor here.

Besides, it is a commonly known fact that there are tourists who, although the tour was far from what the tour operator undertook under the contract, choose to remain silent and forego recourse to a suit just to avoid the expenses, hassle and rancor of litigation, and not because the tour was in accord with what was promised. One does not relish adding to the bitter memory of a misadventure the unpleasantness of another extended confrontation. Furthermore, contrary to private respondent's assertion, not only petitioner but two other members of the tour group, Luz Sui Haw and Ercilla Ampil, confirmed petitioner's complaints when they testified as witnesses for her as plaintiff in the court below. <sup>43</sup>

Private respondent likewise committed a grave misrepresentation when it assured in its Volare 3 tour package that the hotels it had chosen would provide the tourists complete amenities and were conveniently located along the way for the daily itineraries. <sup>44</sup> It turned out that some of the hotels were not sufficiently equipped with even the basic facilities and were at a distance from the cities covered by the projected tour. Petitioner testified on her disgust with the conditions and locations of the hotels, thus:

Q And that these bathrooms ha(ve) bath tub(s) and hot and cold shower(s)?

A Not all, sir.

Q Did they also provide soap and towels?

A Not all, sir, some (had) no toilet paper. <sup>45</sup>

Q Which one?

A The 2 stars, the 3 stars and some 4 stars (sic) hotels.

Q What I am saying . . .

A You are asking a question? I am answering you. 2 stars, 3 stars and some 4 stars (sic) hotels, no soap, toilet paper and (the) bowl stinks. . . .

xxx xxx xxx

Q And that except for the fact that some of these four star hotels were outside the city they provided you with the comfort?

A Not all, sir.

Q Can you mention some which did not provide you that comfort?

A For example, if Ramada Hotel Venezia is in Quezon City, our hotel is in Meycauayan. And if Florence or Ferenze is in manila, our hotel is in Muntinlupa. <sup>46</sup>

xxx xxx xxx

A One more hotel, sir, in Barcelona, Hotel Saint Jacques is also outside the city. Suppose Barcelona is in Quezon City, our hotel is in Marilao. We looked for this hotel inside the city of Barcelona for three (3) hours. We wasted our time looking for almost all the hotels and places where to eat. That is the kind of tour that you have. <sup>47</sup>

Luz Sui Haw, who availed of the Volare 3 tour package with her husband for their honeymoon, shared the sentiments of petitioner and testified as follows:

Q . . . Will you kindly tell us why the hotels where you stayed are not considered first class hotels?

A Because the hotels where we went, sir, (are) far from the City and the materials used are not first class and at times there were no towels and soap. And the two (2) hotels in Nevers and Florence the conditions (are) very worse (sic). <sup>48</sup>

Q Considering that you are honeymooners together with your husband, what (were) your feelings when you found out that the condition were not fulfilled by the defendant?

A I would like to be very honest. I got sick when I reached Florence and half of my body got itch (sic). I think for a honeymooner I would like to emphasize that we should enjoy that day of our life and it seems my feet kept on itching because of the condition of the hotel. And I was so dissatisfied because the European Tour Manager was not around there (were) beautiful promises. They kept on telling us that a European Tour Manager will come over; until our Paris tour was ended there was no European tour manager. <sup>49</sup>

xxx xxx xxx

Q You will file an action against the defendant because there was a disruption of your happiness, in your honeymoon, is that correct?

A That is one of my causes of (sic) coming up here. Secondly, i was very dissatisfied (with) the condition. Thirdly, that Volare 89 it says it will let your heart sing. That is not true. There was no European tour (manager) and the highlights of the tour (were) very poor. The hotels were worse (sic) hotels. <sup>50</sup>

Q All the conditions of the hotels as you . . .

A Not all but as stated in the brochure that it is first class hotel. The first class hotels state that all things are beautiful and it is neat and clean with complete amenities and I encountered the Luxembourg hotel which is quite very dilapidated because of the



flooring when you step on the side "kumikiring" and the cabinets (are) antiques and as honeymooners we don't want to be disturbed or seen. <sup>51</sup>

XXX XXX XXX

Q None of these are first class hotels?

A Yes, sir.

Q So, for example Ramada Hotel Venezia which according to Miss Geraldez is first class hotel is not first class hotel?

A Yes, sir.

Q You share the opinion of Miss Geraldez?

A Yes, sir.

Q The same is true with Grand Hotel Palatino which is not a first class hotel?

A Yes, sir.

Q And Hotel Delta Florence is not first class hotel?

A That is how I got my itch, sir. Seven (7) days of itch.

Q How about Hotel Saint-Jacquez, Paris?

A It is far from the city. It is not first class hotel.

Q So with Hotel Le Prieure Du Coeur de Jesus neither a first class hotel?

A Yes, sir.

Q Hotel De Nevers is not a first class hotel?

A Yes, sir.

Q Hotel Roc Blanc Andorra is not a first class hotel?

A Yes, sir.

Q Saint Just Hotel, Barcelona is not a first class hotel?

A Yes, sir.

Q Hotel Pullman Nice neither is not a first class hotel?

A Yes, sir.

Q Hotel Prinz Eugen and Austrotel are not first class hotels?

A Yes, sir. <sup>52</sup>

Private respondent cannot escape responsibility by seeking refuge under the listing of first-class hotels in publications like the "Official Hotel and Resort Guide" and Worldwide Hotel Guide." <sup>53</sup> Kuoni Travel, its tour operator, <sup>54</sup> which prepared the hotel listings, is a European-based travel agency <sup>55</sup> and, as such, could have easily verified the matter of first-class accommodations. Nor can it logically claim that the first-class hotels in Europe may not necessarily be the first-class hotels here in the Philippines. <sup>56</sup> It is reasonable for petitioner to assume that the promised first-class hotels are equivalent to what are considered first-class hotels in Manila. Even assuming *arguendo* that there is indeed a difference in classifications, it cannot be gainsaid that a first-class hotel could at the very least provide basic necessities and sanitary accommodations. We are accordingly not at all impressed by private respondent's attempts to trivialize the complaints thereon by petitioner and her companions.

In a last ditch effort to justify its choice of the hotels, private respondent contends that it merely provided such "first class" hotels which are commensurate to the tourists budget, or which were, under the given circumstances, the "best for their money." It postulated that it could not have offered better hostelry when the consideration paid for hotel accommodations by the tour participants was only so much, <sup>57</sup> and the tour price of \$2,990.00 covers a

European tour for 22 days inclusive of lower room rates and meals. <sup>58</sup> this is implausible, self-serving and borders on sophistry.

The fact that the tourists were to pay a supposedly lower amount, such that private respondent allegedly retained hardly enough as reasonable profit, <sup>59</sup> does not justify a substandard form of service in return. It was private respondent, in the first place, which fixed the charges for the package tour and determined the services that could be availed of corresponding to such price. Hence, it cannot now be heard to complain that it only made a putative marginal profit out of the transaction. If it could not provide the tour participants with first-class lodgings on the basis of the amount that they paid, it could and should have instead increased the price to enable it to arrange for the promised first-class accommodations.

On the foregoing considerations, respondent court erred in deleting the award for moral and exemplary damages. Moral damages may be awarded in breaches of contract where the obligor acted fraudulently or in bad faith. <sup>60</sup> From the facts earlier narrated, private respondent can be faulted with fraud in the inducement, which is employed by a party to a contract in securing the consent of the other.

This fraud or *dolo* which is present or employed at the time of birth or perfection of a contract may either be *dolo causante* or *dolo incidente*. The first, or causal fraud referred to in Article 1338, are those deceptions or misrepresentations of a serious character employed by one party and without which the other party would not have entered into the contract. *Dolo incidente*, or incidental fraud which is referred to in Article 1344, are those which are not serious in character and without which the other party would still have entered into the contract. <sup>61</sup> *Dolo causante* determines or is the essential cause of the consent, while *dolo incidente* refers only to some particular or accident of the

obligations. <sup>62</sup> The effects of *dolo causante* are the nullity of the contract and the indemnification of damages, <sup>63</sup> and *dolo incidente* also obliges the person employing it to pay damages. <sup>64</sup>

In either case, whether private respondent has committed *dolo causante* or *dolo incidente* by making misrepresentations in its contracts with petitioner and other members of the tour group, which deceptions became patent in the light of after-events when, contrary to its representations, it employed an inexperienced tour guide, housed the tourist group in substandard hotels, and reneged on its promise of a European tour manager and the visit to the leather factory, it is indubitably liable for damages to petitioner.

In the belief that an experienced tour escort and a European tour manager would accompany them, with the concomitant reassuring and comforting thought of having security and assistance readily at hand, petitioner was induced to join the Volare 3 tourists, instead of travelling alone <sup>65</sup> She likewise suffered serious anxiety and distress when the group was unable to visit the leather factory and when she did not receive first-class accommodations in their lodgings which were misrepresented as first-class hotels. These, to our mind, justify the award for moral damages, which are in the category of an award designed to compensate the claimant for that injury which she had suffered, and not as a penalty on the wrongdoer, <sup>66</sup> we believe that an award of P100,000.00 is sufficient and reasonable.

When moral damages are awarded, especially for fraudulent conduct, exemplary damages may also be decreed. Exemplary damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. According to the code Commission, exemplary damages are required by public policy, for wanton acts must be suppressed. <sup>67</sup> An award, therefore, of P50,000.00 is called for to deter travel agencies from resorting to advertisements and enticements with the intention of realizing considerable profit at the expense of the public, without ensuring compliance with their express commitments. While, under the present state of the law, extraordinary diligence is not required in travel or tour contracts, such as that in the case at bar, the travel agency acting as tour operator must nevertheless be held to strict accounting for contracted services, considering the public interest in tourism, whether in the local or in the international scene. Consequently, we have to likewise reject the theory of private respondent that the promise it made in the tour brochure may be regarded only as "commendatory trade talk." <sup>68</sup>

With regard to the honorarium for counsel as an item of damages, since we are awarding moral and exemplary damages, <sup>69</sup> and considering the legal importance of the instant litigation and the efforts of counsel evident from the records of three levels of the judicial hierarchy, we favorably consider the amount of P20,000.00 therefor.

WHEREFORE, premises considered, the decision of respondent Court of Appeals is hereby SET ASIDE, and another one rendered, ordering private respondent Kenstar Travel Corporation to pay petitioner Lydia L. Geraldez the sums of P100,000.00 by way of moral damages, P50,000.00 as exemplary damages, and P20,000.00 as and for attorney's fees, with costs against private respondent. The award for nominal damages is hereby deleted.

*Padilla, Nocon and Puno, JJ., concur.*

*Narvasa, C.J., took no part.*

**#Footnotes**

- 1 Original Record, 1.
- 2 *Ibid.*, 90.
- 3 *Ibid.*, 124.
- 4 *Ibid.*, 152.
- 5 Exhibits 6-CC-1, 6-DD-1, Folder of Exhibits for Defendant Kenstar Travel Corporation.
- 6 *Rollo*, 27.
- 7 Original record, 256; per Judge Benigno T. Dayaw.
- 8 *Ibid.*, 271.
- 9 Justice Regina G. Ordoñez-Benitez as *ponente*, with Justices Gloria C. Paras and Eduardo G. Montenegro concurring.
- 10 *Rollo*, CA-G.R. CV No. 34961, Decision, 10.
- 11 *Ibid.*, 5; Original Record, 264.
- 12 *Ibid.*, 6.
- 13 *Ibid.*, 8-10.
- 14 Original Record, 183, Exhibit 8.
- 15 TSN, December 14, 1990, 27.
- 16 TSN, November 15, 1990, 15.
- 17 Petition, 10; *Rollo*, 20.
- 18 *Rollo*, CA-G.R. CV No. 34961, Decision, 7.
- 19 TSN, December 14, 1990, 31.
- 20 *Ibid.*, *id.*, 29.
- 21 Memorandum for Private Respondent, 31; *Rollo*, 132.
- 22 Original record, 183, Exhibit 8.
- 23 *Ibid.*, 25.
- 24 Memorandum for Private Respondent, 20; *Rollo*, 121.
- 25 *Id.*, 19; *ibid.*, 120.
- 26 TSN, December 14, 1990, 31.
- 27 *Supra.*, Fn. 22.
- 28 Memorandum for Private Respondent, 21-24; *Rollo*, 122-125.
- 29 *Rollo*, CA-G.R. CV No. 34961, Decision, 5.
- 30 TSN, December 14, 1990, 28.
- 31 Memorandum for Private Respondent, 25; *Rollo*, 126.
- 32 U.S.-Bach vs. Friden Calculating Mach. Co., C.C.A. Ohio 155 F. 2d 361, 365.
- 33 Memorandum for Private Respondent, 23; *Rollo*, 124.
- 34 Section 1, Rule 131, Rules of Court.



- 35 TSN, November 15, 1990, 16.
- 36 Original Record, 183, Exhibit 8-A; Memorandum for Private Respondent, 11; *Rollo*, 112.
- 37 BPI Credit Corp. vs. Court of Appeals, et al., G.R. No. 96755, December 4, 1991, 204 SCRA 601.
- 38 Ong Yiu vs. Court of Appeals, et al., L-40597, June 29, 1979, 91 SCRA 223.
- 39 Saludo, Jr. vs. Court of Appeals, et al., G.R. No. 95536, March 23, 1992, 207 SCRA 498; see also Art. 1377, Civil Code.
- 40 Original Record, 183, Exhibit 8-A.
- 41 Memorandum for Private Respondent, 18; *Rollo*, 119.
- 42 This specific facet of the rule more fully states: *Res inter alios acta aliis neque nolle potest*.
- 43 TSN, November 15, 1990, 10-27; 37-52.
- 44 Original Record, 183, Exhibit A.
- 45 TSN, October 12, 1990, 20.
- 46 *Ibid.*, *id.*, 21-22.
- 47 *Ibid.*, *id.*, 22-23.
- 48 *Ibid.*, November 15, 1990, 10.
- 49 *Ibid.*, *id.*, 16-17.
- 50 *Ibid.*, *id.*, 19-20
- 51 *Ibid.*, *id.*, 25-26.
- 52 *Ibid.*, *id.*, 26-27.
- 53 Memorandum for Private Respondents, 27; *Rollo*, 128.
- 54 TSN, March 22, 1991, 22.
- 55 *Supra.*, Fn. 53.
- 56 See TSN, December 14, 1990, 22.
- 57 Memorandum for Private Respondent, 17; *Rollo*, 118.
- 58 *Id.*, 28-31; *ibid.*, 129-132.
- 59 *Ibid.*, 29; *id.*, 130.
- 60 Article 2220, Civil Code.
- 61 Jurado, Comments and Jurisprudence on Obligations and Contracts, 1987 ed., 438.
- 62 Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, 1986 ed., 509.
- 63 *Op. cit.*, 510.
- 64 Article 1344, Civil Code.
- 65 TSN, October 12, 1990, 14.
- 66 Simex International (Manila), Inc. vs. Court of Appeals, et al., G.R. No. 88013, March 19, 1990, 183 SCRA 360.
- 67 De Guzman vs. National Labor Relations Commission, et al., G.R. No. 90856, July 23, 1992, 211 SCRA 723.

68 Memorandum for Private Respondent, 33; *Rollo*, 134.

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